



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

JAN 28 2005

R. Matthew Martin, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
600 Peachtree Street, N.E., Suite 2400  
Atlanta, GA 30308

RE: MUR 5643 (formerly Pre-MUR 426)  
Fred Rowan  
Michael Casey  
Charles Whetzel  
David Brown

Dear Mr. Martin:

On January 25, 2005, the Federal Election Commission found that there is reason to believe that your clients, Fred Rowan, Michael Casey, Charles Whetzel, and David Brown, violated 2 U.S.C. §§ 441b and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based upon information contained in your submission dated September 15, 2004 and ascertained in the normal course of carrying out the Commission's supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Please

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note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Audra Wassom, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas  
Chairman

Enclosures

Factual and Legal Analysis  
Procedures  
Conciliation Agreement

cc (w/attachments): David O. Stewart, Esq. – Ropes & Gray  
cc (w/o attachments): Brendan M. Gibbons, VP & General Counsel – Carter's, Inc.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Carter's, Inc.  
Frederick Rowan  
Michael Casey  
Charles Whetzel  
David Brown

**MUR: 5643**

**I. INTRODUCTION**

This matter was generated when Respondents voluntarily reported a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). The evidence demonstrates that Respondents violated the Act when Carter's, Inc. reimbursed four of its officers, Messrs. Rowan, Casey, Whetzel, and Brown, for political contributions made in 2002. Accordingly, the Commission finds reason to believe that Respondents violated 2 U.S.C. §§ 441b and 441f.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

Carter's, Inc. is a corporation headquartered in Atlanta, Georgia that produces children's apparel. Frederick Rowan is the Chairman and Chief Executive Officer of Carter's, Inc. Michael Casey is the Executive Vice President-Finance and Chief Financial Officer of Carter's, Inc. Charles Whetzel is the Executive Vice President-Global Sourcing for Carter's, Inc. David Brown is the Executive Vice President-Operations for Carter's, Inc.

In March 2002, Frederick Rowan, Chairman and CEO of Carter's, learned from his wife that President Bush was going to be in Atlanta at the end of the month to give a speech. Mr. Rowan decided that the event would be a "good motivation-building

opportunity for Carter's senior management." Submission at 3. Mr. Rowan then suggested to certain executives at Carter's that they all attend the speech with their spouses as a group. The executives who attended included Frederick Rowan, Michael Casey, Charles Whetzel, and David Brown.<sup>1</sup>

Mrs. Rowan arranged for tickets to the speech with Mr. Rowan's executive assistant. Upon consultation with her friend, Bernice Rowan learned that the tickets had to be purchased with checks from the individuals attending the event made out to Chambliss for Senate.<sup>2</sup> Chambliss for Senate was the principal campaign committee of Saxby Chambliss, a candidate for a U.S. Senate seat from Georgia in 2002.

Mrs. Rowan obtained the checks and information for those attending through Mr. Rowan's executive assistant. Around the same time, Mr. Rowan had his assistant inform all the executives attending the event to submit the cost of the tickets to the company for reimbursement. Mr. Rowan indicates that he viewed the event as "an appropriate company expenditure" and "an excellent team-building event of the sort [he] tr[ies] to arrange for the management team from time to time." Submission at 4. Messrs. Casey, Whetzel, Brown, and Rowan submitted the cost of the tickets for them and their wives to the company for reimbursement.

Although the event was plainly a political fundraiser, the attendees contend they viewed it primarily as a speech by the President. Even though the checks for the tickets

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<sup>1</sup> A fifth Carter's executive, Joseph Pacifico, attended the event, but did not submit a request for reimbursement.

<sup>2</sup> Each person attending was also required to provide his/her social security number and date of birth. All parties claim to have believed that the individual checks, social security numbers, and birth dates were merely for security purposes, and they did not believe they were making a political contribution

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were made out to Chambliss for Senate and the event featured President Bush and Saxby Chambliss, Mr. Rowan did not regard the payments for tickets as political contributions. Submission at 5. As for the other executives, Mr. Brown apparently did recognize the dinner as a fundraising event but never mentioned that or discussed it as such with the others. It does not appear that any of the individuals had ever made a political contribution to a federal candidate prior to the contributions at issue in this matter.

Carter's reimbursed Messrs. Rowan, Casey, Whetzel, and Brown for their tickets and their spouses' tickets to the event in the amount of \$8,000. An internal review of the company, conducted in early summer 2004, "identified the reimbursements of the Bush event costs as violating federal campaign finance laws." Submission at 5. The review also determined the reimbursements violated company policy as it existed in March 2002. Messrs. Rowan, Casey, Whetzel, and Brown were instructed to repay the company for the reimbursement of the event costs. They have each repaid Carter's for the prior reimbursement of contributions made in connection with their tickets and their spouses' tickets to the fundraiser.<sup>3</sup> The company also reissued its expense reimbursement policy, reiterating that it would not reimburse the costs of political contributions of employees. Carter's also instructed its counsel to disclose the violation to federal enforcement officials.

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<sup>3</sup> Because the submission included affidavits indicating that the four spouses were unaware of the corporate reimbursements, they were not generated as respondents in this matter

B. Analysis

1. Carter's

Under the Act, corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a).

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution, and that no person shall knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f. Commission regulations also prohibit persons from knowingly assisting in making contributions in the name of another. *See* 11 C.F.R. § 110.4(b)(1)(iii).

Carter's admits to reimbursing the four executives for the cost of the tickets to the speech by President Bush, which were political contributions to attend a fundraiser for Chambliss for Senate.<sup>4</sup>

Although 441f violations are usually knowing and willful, the available information indicates that Respondents were unaware that their conduct was illegal. Respondents also revealed the violation of the law to federal authorities as soon as it was discovered and have taken steps to remedy the violation. Therefore, the Commission finds reason to believe Carter's violated 2 U.S.C. §§ 441b and 441f.

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<sup>4</sup> "The entire amount paid to attend a fundraiser or other political event and the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution." 11 C.F.R. § 100.53

2. Messrs. Rowan, Casey, Whetzel, and Brown

Section 441b(a) prohibits any officer or director of any corporation from consenting to any contribution or expenditure by the corporation. It appears Mr. Rowan was the individual who suggested obtaining reimbursement for the fundraiser tickets from the company, and each other officer consented in submitting the costs of their tickets to the company for reimbursement. Furthermore, each person knowingly permitted his and his wife's name to be used to effect the contributions. Each of the four officer's wives also attended the fundraiser thereby making a contribution. Each couple wrote a check for \$2,000 on their joint checking account for the pair of tickets, and the officers were reimbursed by Carter's. When the violations were discovered, each officer repaid Carter's for the full \$2,000 reimbursement with a check written on a joint checking account with his spouse. The Commission finds reason to believe that Messrs. Rowan, Casey, Whetzel, and Brown violated Sections 441b and 441f of the Act.

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